

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CHRISTY MATTSON,

Appellant,

V.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 84-192

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice of violation and civil penalty issued by Southwest Air Pollution Control Authority (SWAPCA) to Christy Mattson, having come on regularly for formal hearing on the 29th of October 1984, in Vancouver, Washington, and appellant Christy Mattson representing herself, and respondent SWAPCA represented by David Jahn, attorney at law, with Lawrence J. Faulk (presiding) and Gayle Rothrock sitting for the Board, and the Board having considered the exhibits, records and files herein, and having reviewed the Proposed decision of the Board mailed to the parties on the 6th day of

1 November, 1984, and more than twenty days having elapsed from said
2 service; and

3 The Board having received exceptions and denying same, and the
4 Board having considered the exceptions and denying same, and being
5 fully advised in the premises, NOW THEREFORE,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
7 decision containing Findings of Fact, Conclusions of Law and Order and
8 Dissenting Opinion, dated the 6th day of November 1984, and
9 incorporated by reference herein and attached hereto as Exhibit A, is
10 adopted and hereby entered as the Board's Final Findings of Fact,
11 Conclusions of Law and Order herein.

12 DATED this 7 day of December, 1984.

13 POLLUTION CONTROL HEARINGS BOARD

14  12/7/84
15 LAWRENCE J. FAULK, Vice Chairman
16

17  see dissenting opinion
18 GAYLE ROTHROCK, Chairman
19
20
21
22
23
24
25

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-192

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CHRISTY MATTSON,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 84-192

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a notice of violation and civil penalty of \$25 for open air burning of natural vegetation in violation of the State Clean Air Act, came on for formal hearing before the Pollution Control Hearings Board, Lawrence J. Faulk (presiding), and Gayle Rothrock on October 29, 1984, at Vancouver. Written notes were made by the Board.

Appellant Christy Mattson appeared and represented herself. Respondent Southwest Air Pollution Control Authority (SWAPCA) appeared by its attorney David Jahn.

EXHIBIT "A"

1 Witnesses were sworn and testified. Exhibits were examined. From
2 the testimony heard and the exhibits examined, the Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
6 a certified copy of its revised Regulation I, adopted April 17, 1984,
7 the contents of which are noticed.

8 II

9 On June 30, 1984, in the afternoon, appellant allowed or caused an
10 outdoor fire at 5406 NE 63rd Avenue, Vancouver, Washington.

11 III

12 There was one fire pile approximately 3 feet by 3 feet consisting
13 of natural vegetation. Fire Protection District #5 personnel
14 telephoned respondent agency and requested an air quality specialist
15 go to the scene of the fire.

16 IV

17 Respondent SWAPCA's inspector, responding to the complaint,
18 arrived at the fire site at 12:10 p.m., observed natural vegetation
19 burning and discussed the codes and practices of open burning with
20 appellant. This included a discussion of the dates of the spring burn
21 declared by SWAPCA, a season which started March 1, and ended June 15,
22 1984. The appellant was issued and signed a field notice of violation
23 of Section 400-035 of Regulation I of SWAPCA.

24 V

25 On July 6, 1984, appellant was issued a regular notice of

26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-192

1 violation and a letter from the Executive Director of respondent
2 agency levying a \$25 fine which she received July 7, 1984. From this
3 appellant appealed to this Board on July 25, 1984.

4 VI

5 Respondent publicizes the burn season by notifying the news media
6 immediately before the season begins and just prior to its close.
7 Written permission is not required for limited open burning during the
8 burn season. Outside of the burn season, no open burning may be
9 conducted, without a permit.

10 VII

11 Appellant did not know the dates of the burn season. She is a new
12 home owner and thought she should have been given a warning since this
13 was her first offense.

14 VIII

15 Appellant has received no prior violations of SWAPCA Regulation I.

16 IX

17 Any Conclusion of Law which should be deemed a Finding of Fact is
18 hereby adopted as such.

19 From these Findings the Board comes to these

20 CONCLUSIONS OF LAW

21 I

22 The Legislature of the State of Washington has enacted the
23 following policy on outdoor fires:

24 It is the policy of the state to achieve and maintain
25 high levels of air quality and to this end to
26 minimize to the greatest extent reasonably possible
the burning of outdoor fires. Consistent with this

1 policy, the legislature declares that such fires
2 should be allowed only on a limited basis under
strict regulation and close control. (RCW 70.94.740)

3 Pursuant to this and other legislative authority, the respondent has
4 adopted its Regulation I, Section 400-035, which provides in relevant
5 part:

6 No person shall ignite, cause to be ignited, permit
7 to be ignited, or suffer, allow, or maintain any open
fire within the jurisdiction of the Authority, except
8 as provided in this Regulation...(2) Open burning may
be done under permit: (b) No permit shall be issued
9 unless the Control Officer is satisfied that: (i) No
practical alternate method is available for the
10 disposal of the material to be burned. (The
Authority has a written Open Outdoor Fire Policy
11 describing times, areas and kinds [of] permitted open
fires)....

12 II

13 It surely is not the Board's responsibility to tell a local air
14 pollution control agency how to perform its duties. But it has been
15 apparent for a long time to the Board that the method of publishing
16 the burn season regulations is not adequate. When the only public
17 notice of the burn seasons is by voluntary publication and broadcast
18 by the media, then confusion is created among residents of the county.

19 It is the duty of governmental regulatory agencies to make its
20 rules clear and understandable to the public. When agencies fail in
21 this duty, citizens should not be punished for failure to comply.

22 Richard Peters v. SCAPCA, PCHB No. 354 (1973).

23 III

24 The burden of proof in a case where a governmental agency has
25 issued a fine is on the agency.

26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-192

IV

It may be that it is a citizen's responsibility to keep abreast of all the multitude of laws and regulations which govern his life but surely it is also the responsibility of a regulatory governmental agency to make its rules clear and understandable to its citizens.

The Board believes that SWAPCA should adopt the burn seasons as part of their Regulation I and publish same; and (2) require the inspectors to carry copies of this part of the Regulation I with them for easy distribution to the citizens; and (3) introduce this handbill in all future proceedings before this Board.

The burn seasons have never been introduced in any of these proceedings as evidence. In other words, the Board has never seen a piece of paper that states the dates of the burn seasons.

V

Under the facts, the instant penalty should be vacated. The public interest would be better served if efforts to inform citizens of restrictions were more than perfunctory in matters so basic to the management of households as open burning.

VIII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

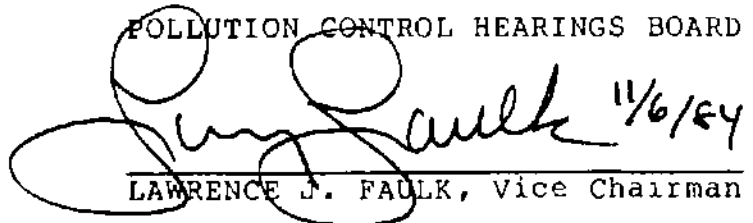
From these Conclusions the Board enters this

ORDER

The notice of violation and \$25 civil penalty is vacated.

DONE this 6th day of November, 1984.

POLLUTION CONTROL HEARINGS BOARD

 11/6/84
LAWRENCE J. FAULK, Vice Chairman

See Dissenting Opinion

GAYLE ROTHROCK, Chairman

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 84-192

1 DISSENT TO PROPOSED ORDER - by GAYLE ROTHROCK

2 FINDINGS OF FACT

3 I

4 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
5 a certified copy of its revised Regulation I, adopted April 17, 1984,
6 which is noticed.

7 II

8 On June 30, 1984, in the afternoon, appellant allowed or caused an
9 outdoor fire at 5406 NE 63rd Avenue, Vancouver, Washington.

10 III

11 There was one fire pile approximately 3 feet by 3 feet consisting
12 of natural vegetation. Fire Protection District #5 personnel
13 telephoned respondent agency and requested an air quality specialist
14 go to the scene of the fire.

15 IV

16 Respondent SWAPCA's inspector, responding to the complaint,
17 arrived at the fire site at 12:10 p.m., observed natural vegetation
18 burning and discussed the codes and practices of open burning with
19 appellant. This included a discussion of the dates of the spring burn
20 declared by SWAPCA, a season which started March 1, and ended June 15,
21 1984. The appellant was issued and signed a field notice of violation
22 of Section 400-035 of Regulation I of SWAPCA.

23 V

24 On July 6, 1984, appellant was issued a regular notice of
25 violation and a letter from the Executive Director of respondent
26

1 agency levying a \$25 fine, which she received July 7, 1984. From this
2 appellant Mattson appealed by letter to the Board on July 25, 1984.

3 VI

4 Respondent publicizes the burn season by notifying the news media
5 immediately before the season begins and just prior to its close.
6 Written permission is not required for limited open burning during the
7 burn season. Outside of the burn season, no open burning may be
8 conducted, without a permit.

9 VII

10 Appellant did not know the dates of the burn season. She did not
11 inquire of anyone about these dates. She is a new home owner, having
12 lived in that neighborhood since February, and thought she should have
13 been given a warning since this was her first offense.

14 VIII

15 Appellant has received no prior violations of SWAPCA Regulation I.

16 X

17 Any Conclusion of Law which should be deemed a Finding of Fact is
18 hereby adopted as such.

19 From these Findings the Board comes to these

20 CONCLUSIONS OF LAW

21 I

22 The Legislature of the State of Washington has enacted the
23 following policy on outdoor fires:

24 It is the policy of the state to achieve and maintain
25 high levels of air quality and to this end to
minimize to the greatest extent reasonably possible

26 DISSENTING OPINION
27 PCHB No. 84-192

1 the burning of outdoor fires. Consistent with this
2 policy, the legislature declares that such fires
3 should be allowed only on a limited basis under
4 strict regulation and close control. (RCW 70.94.740)

5 Pursuant to this and other legislative authority, the respondent has
6 adopted its Regulation I, Section 400-035, which provides in relevant
7 part:

8 No person shall ignite, cause to be ignited, permit
9 to be ignited, or suffer, allow, or maintain any open
10 fire within the jurisdiction of the Authority, except
11 as provided in this Regulation...(2) Open burning may
12 be done under permit: (b) No permit shall be issued
13 unless the Control Officer is satisfied that: (1) No
14 practical alternate method is available for the
15 disposal of the material to be burned. (The
16 Authority has a written Open Outdoor Fire Policy
17 describing times, areas and kinds [of] permitted open
18 fires)....

19 II

20 Respondent agency established that this regulation was, in fact,
21 violated. The burn season is a time during which general permission
22 to engage in limited outdoor burning of natural vegetation is granted
23 by the authority. However, the fire in question occurred 15 days
24 after the close of the declared burn season. Appellant did not
25 contest either that an outdoor fire had been conducted or that she had
26 no permit to conduct it.

27 III

Ignorance of open burning regulations is no defense to a citation
of their violation. J.J. Welcome & Sons v. PSAPCA, PCHB No. 42 (1971).

IV

RCW 70.94.431 provides for the imposition of a civil penalty

DISSENTING OPINION
PCHB No. 84-192

1 against "any person who violates any of the provisions of chapter
2 70.94 RCW or any of the rules and regulations of the department or the
3 board." The violation of SWAPCA, Regulation I, Section 400-035, falls
4 within this language, and, therefore, assessment of a penalty in this
5 instance was lawful.

6 V

7 SWAPCA publicized the period during which limited burning could be
8 conducted. Its program was well enough understood for Fire District
9 #5 personnel to complain about appellant's fire. The penalty of \$25
10 is substantial in light of the nature and duration of this single
11 violation. However, in consideration of SWAPCA's purpose to secure
12 compliance generally, the amount of the penalty assessed is not
13 manifestly unreasonable.

14 VI

15 Under the facts, the instant penalty should be upheld. However,
16 the Board points out that SWAPCA's open burning regulations are not a
17 model of clarity. The public interest would be better served if efforts
18 to inform citizens of restrictions were more than perfunctory in
19 matters so basic to the management of households as open burning.

20 VIII

21 Any Finding of Fact which should be deemed a Conclusion of Law is
22 hereby adopted as such.

23 From these Conclusions the Board enters this
24
25

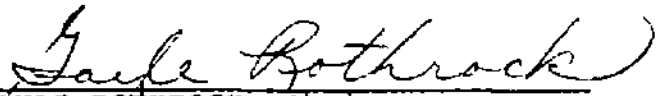
26 DISSENTING OPINION
27 PCHB No. 84-192

ORDER

The notice of violation and \$25 civil penalty is affirmed.

DONE this 6th day of November, 1984.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Chairman

DISSENTING OPINION
PCHB No. 84-192